

 KENTUCKY CORRECTIONS Policies and Procedures	Policy Number	Total Pages
	15.6	13
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	March 14, 2014	August 1, 2014
Authority /References KRS 196.035 and 197.020 Wolf v. McDonnell, 418 U.S. 539 (1974) Superintendent, Mass. Correctional Institution at Walpole v. Hill 105 SCT 2768 (1985); Smith v. O'Dea, Ky. App. 938 S.W.2d 575 (1997) Haney v. Thomas, 406 S.W.3d 823 (Ky. 2013) ACA 4-4227, 4-4234, 4-4235, 4-4237 through 4-4248	Subject ADJUSTMENT PROCEDURES AND PROGRAMS	

I. DEFINITIONS

“Adjustment Committee” means a committee appointed by the Warden of an institution empowered to hear, adjudicate and assess appropriate discipline for violations of rules or regulations.

“Detention” means placing an inmate in administrative segregation to ensure the safety and security of the institution, other inmates, staff or visitors pending appropriate administrative action.

“Disciplinary report” means a written report prepared by a staff member that alleges a violation of rules or regulations by an inmate.

“Major violation” means any violation of a Category III or higher rule contained in CPP 15.2.

“Minor violation” means any violation of a Category I or II rule contained in CPP 15.2.

“Unit Hearing Officer or Adjustment Officer” means a staff member appointed by the Warden or his designee, empowered to hear, adjudicate and assess appropriate penalties for violations of rules or regulations.

II. POLICY and PROCEDURES

An alleged violation of rules and regulations shall be fairly processed. An inmate's due process rights shall be fully protected.

A. General

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1. The Adjustment Committee is an independent body that shall consist of at least three (3) members appointed by the Warden or his designee.
 - a. At least one (1) member shall be a program staff member.
 - b. At least one (1) member shall be a security staff member.
 - c. The chairperson shall be at the supervisory level.
 - d. It shall be within the discretion of the Warden to use an Adjustment Committee, Adjustment Officer, or both.
2. Adjustment Officer
 - a. The Warden or his designee may appoint an Adjustment Officer.
 - b. The Adjustment Officer shall be a staff member at the supervisory level.
3. Unit Hearing Officer
 - a. The Warden or his designee may appoint a Unit Hearing Officer.
 - b. The Unit Hearing Officer shall be a staff member at the supervisory level.
 - c. The Unit Hearing Officer shall hear a minor violation if the inmate waives his right to be heard by the Adjustment Committee or Adjustment Officer.
4. Disqualification
 - a. A committee member, Adjustment Officer or Unit Hearing Officer shall be disqualified in every case in which he has:
 - 1) Filed the complaint or witnessed the incident;
 - 2) participated as an investigating officer;
 - 3) been assigned the subsequent review of the decision.
5. A waiver to be heard by the Unit Hearing Officer shall be signed and attached to the disciplinary report.

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B. Functions of the Adjustment Committee and Adjustment Officer or Unit Hearing Officer

1. The Adjustment Committee, Adjustment Officer or Unit Hearing Officer shall:

a. Hear and decide a disciplinary report based solely on information obtained in the hearing process, including staff reports, the statements of the inmate charged, and evidence derived from witnesses and documents.

b. Assess penalties for a violation of the rules or regulations as provided in CPP 15.2.

1) If an amendment is made to another violation within the same category or to a lower category violation, and the committee is convinced the amendment shall alter the inmate's defense to the amended violation, the committee shall give the inmate the option of at least a twenty-four (24) hour continuance for preparation.

2) However, nothing in this policy shall prohibit a charge from being amended to conform to the evidence presented. Amendment options before the committee or adjustment officer include amending to a lower category violation; amending the violation within the same category; or, dismissing the charged violation.

c. Make recommendations as to referrals for prosecution.

d. Suspend the discipline for a period not to exceed six (6) months.

1) During the suspension period if the inmate has not been found to have an additional rule violation, the discipline shall be vacated, but, the disciplinary report and related documents shall be retained in the inmate file.

2) Suspended discipline may be revoked during the period of suspension upon the finding of a Major Violation.

e. If more than one (1) disciplinary violation is heard, or the inmate is currently serving or waiting to serve disciplinary segregation and the decision is made to assess segregation time, it shall be designated as to whether the time shall be served consecutively or concurrently.

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f. Prior to the hearing, if it appears that the charge is not proper, the Chairperson or Adjustment Officer may send the disciplinary report back to an investigator for a more appropriate charge. If during the hearing, the Adjustment Committee or Adjustment Officer determines that the charge is inappropriate, the report may be returned to the investigator but the committee or Adjustment Officer shall not participate in a subsequent re-hearing. This procedure is in addition to amending the charge within the same category or a lower category; whichever is more appropriate.

2. The institution shall preserve the audio tape recording of the hearing for a period of two (2) years from the date of the Warden's review. If, through any mechanical malfunction, the recording is lost, nothing shall effect the ultimate decision of the committee or officer, pending the Warden's review.

3. Function of Staff Counsel or Assigned Legal Aide

a. The function of staff counsel, if one is assigned, or assigned legal aide shall be to aid the inmate in preparing and presenting a defense.

b. Staff counsel or an assigned legal aide shall be appointed if it appears that an inmate is not capable of collecting and presenting evidence on his behalf.

c. In all cases, the inmate and staff counsel or the assigned legal aide shall leave the hearing during the deliberation phase.

C. Adjustment Procedures

1. The Disciplinary Report

a. The disciplinary report shall be clear, concise and contain only the facts the reporting employee has personally witnessed or otherwise verified, including a statement of how verification is made.

b. A report shall be made in quadruplicate.

2. The disciplinary report shall include:

a. a description of the incident;

b. the date and time of the incident;

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- c. the date and time the report is completed;
 - d. list of witnesses to the incident;
 - e. disposition of physical evidence;
 - f. any immediate action taken, including use of force, or unusual inmate behavior;
 - g. the reporting employee's signature.
- 3. Upon completion of the disciplinary report it shall be submitted to the shift supervisor or other designated supervisor for a review.
- 4. Investigation
 - a. Supervisor's Review
 - 1) Upon receipt of a disciplinary report, the shift supervisor or other designated supervisor shall begin the initial investigation by reviewing the report to determine that it contains all pertinent data.
 - 2) The supervisor's review shall begin within twenty-four (24) hours of the completion of the disciplinary report unless circumstances prevent it, which shall be documented on Part I of the report.
 - 3) Upon the completion of his review, the supervisor shall sign the report, indicating the date and time the review was begun.
 - 4) The supervisor shall not be prohibited from completing the review if he witnessed or investigated the incident.
 - b. Investigator's Review
 - 1) Following the supervisor's review:
 - (a) The investigation shall be completed in a timely manner whenever possible, by an appropriate supervisor not involved in the incident. The investigator's review shall begin as soon as

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practicable after the completion of the supervisor's review.

- (b) Nothing in this policy shall prohibit the supervisor's review and investigator's review from being conducted by the same supervisor unless the individual witnessed the incident.
- 2) During the course of the investigator's review, the investigator shall:
- (a) Give the inmate the Miranda warnings for purposes of criminal prosecution, if criminal charges may be filed.
 - (b) Collect evidence, documents and statements.
 - (c) Interview witnesses, unless a witness is clearly irrelevant to the issues presented, and record a brief statement of what the witness reports.
 - (d) Assign the most appropriate violation.
 - (e) List witnesses the inmate indicates he wishes to have at the hearing.
 - (f) Advise the inmate of his right to consult with an assigned legal aide of his choice at least twenty-four (24) hours prior to the hearing and list the choice in the space provided. If the inmate does not provide his choice, he shall be informed that unless he does so within twenty-four (24) hours of receiving the report, he has waived his legal aide. If the inmate submits a choice after the investigation, he shall do so in writing to the chairperson of the adjustment committee or to the adjustment officer.
 - (g) Record on the form and advise the inmate of the anticipated date, time, and place of the hearing. An inmate transferred from another facility or a community service center shall be notified of the anticipated date and time of the hearing upon arrival to the institution provided the necessary documentation is received upon his arrival.

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- (h) Advise the inmate of his right to waive his presence at the hearing.
 - (i) Nothing in this policy shall prohibit a disciplinary report from being re-investigated if deemed appropriate or necessary.
- 3) Upon completion of the investigation, the investigator shall:
 - (a) Place the date and time the investigation is completed on the report and have the inmate sign the report.
 - (b) Provide the inmate a copy of the disciplinary report. If the report is not provided, the report shall be given to the inmate not less than twenty-four (24) hours prior to the hearing unless notice is waived.
 - (c) Provide the inmate with a copy of all documents to be used by the Adjustment Committee or Adjustment Officer unless the disclosure of those documents constitutes a threat to the safety and security of an inmate, the public, or the institution. The inmate is not entitled to documents or other evidence that is not submitted for the hearing. Documents include reports, photographs, tests, tape recordings or other written materials to be used as evidence.
 - (1) Excluding those documents prohibited from disclosure as noted above, documents not provided the inmate immediately following the completion of the investigation shall be provided not less than twenty-four (24) hours prior to the hearing.
 - (2) If the documents are not provided, a summary of the information contained in the documents shall be provided. The summary may be included in and consist of the disciplinary report, which shall be noted on Part I of the disciplinary report.

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- (d) If during the investigation, the investigator determines there is insufficient evidence to support a charge against the inmate, he shall dismiss the disciplinary report. Further action shall not be taken on the report other than placing it in a designated file for record-keeping purposes.

5. Inmate Responsibilities

- a. If the inmate has not done so during the course of the investigation, the inmate shall:
 - 1) Identify to the Adjustment Committee or Adjustment Officer what assigned legal aide or staff counsel, if one is available, he has chosen within twenty-four (24) hours of his receipt of the completed disciplinary report.
 - 2) Identify to the Adjustment Committee or Adjustment Officer what witnesses he has selected not less than twenty-four (24) hours prior to the initial hearing.
- b. Failure to identify an assigned legal aide, staff counsel or witnesses in accordance with this procedure shall constitute a waiver.
- c. Special consideration may be given to an inmate transferred from another institution or community center to identify his legal aide or staff counsel no later than twenty-four (24) hours before the hearing.

D. The Hearing

1. The hearing shall be held within seven (7) working days after the completion of the investigation. A delay beyond this time shall be justified and documented in writing on Part II of the report. This time limitation is to benefit staff and does not constitute a time in which the inmate has a right to a hearing.
2. At the hearing the inmate shall be entitled to the following:
 - a. An opportunity to be present during all phases of the hearing, except the deliberations phase, unless he waives this right or his unruly or aberrant behavior does not permit attendance. If an inmate is denied the right to be present during the hearing, the reason shall be stated in writing on Part II of the report. If the inmate has a legal aide and is ejected from the hearing, the legal

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aide shall remain in the hearing unless his conduct dictates otherwise. If an inmate is ejected from the hearing and does not have a legal aide, the assigned legal aide shall be directed to attend the remainder of the hearing, if one is available.

- b. Assistance by a chosen assigned legal aide or appointed staff counsel who has been given an opportunity to confer with the inmate at least twenty-four (24) hours in advance of the hearing unless denied under provisions of C.4 b.2.f.. If a legal aide or staff counsel is denied, the reason for denial shall be stated in writing on Part II of the report.
- c. Consideration of those documents or a summary of those documents provided to the inmate at least twenty-four (24) hours before the hearing. If the documents or the summary is not provided to the inmate, the reason for failure to make these documents available to him shall be made a part of the record of the proceedings.
- d. An opportunity to make a statement and to present documentary evidence.
- e. To be informed of his right to remain silent during the hearing but that his silence may be used against him in the hearing.
- f. An opportunity to call witnesses unless doing so is unduly hazardous to institutional safety and correctional goals; is irrelevant to the issues; is cumulative; or, is unnecessary. If an inmate is not to be permitted to call a witness, justification shall be made in writing on Part II of the report.
- g. An opportunity to question the reporting employee and relevant witnesses, unless doing so shall be unduly hazardous to institutional safety and correctional goals or a reason in f. above.
 - 1) A speaker phone, telephone, or written statements may be used at the hearing.
 - 2) If the Adjustment Committee or Officer denies the inmate the opportunity to call and confront the reporting employee or witness, justification shall be made in writing on Part II of the report.
- h. May plead guilty.

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3. The Adjustment Committee or Adjustment Officer shall prepare a written record that includes:
 - a. The date and time of the hearing and reasons for a continuance, if any.
 - b. A list of witnesses called or denied.
 - c. A summary of the evidence upon which the decision and discipline is based.
 - d. The decision shall have specific findings of fact. The findings may be based on facts contained in the employee's report. The findings shall explicitly state which facts were determined to be true if facts in the employee's report are relied upon .
 - e. If information from a confidential informant is relied upon in the findings of fact, the decision shall reflect evidence of the reliability of the information from the confidential informant or identify corroborating factors. The evidence may include:
 - 1) An oath or affirmation of the investigating officer as to the truth of his report containing confidential information with his appearance before the decision maker;
 - 2) Corroborating testimony;
 - 3) A statement on the record by the chairman or adjustment officer that he had firsthand knowledge of the sources of information and considered them reliable on the basis of their past record of reliability;
 - 4) In camera review of material documenting the investigator's assessment of the credibility of the confidential informant;
 - 5) Multiple unnamed informants whose stories are consistent and corroborate one another; or
 - 6) Other factors that provide some corroboration of the information provided by the confidential informant.
 - f. The discipline imposed and the reason for imposing it.

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- g. A statement as to whether the discipline may be stayed during an appeal and the reason.
 - h. The signature of all committee members or adjustment officer.
 - i. The signature of the inmate and assigned legal aide or staff counsel.
4. If the Adjustment Committee or Adjustment Officer finds the inmate did not commit the violation or if an appeal results in the reversal, the disciplinary report shall be removed from the inmate's file.

E. Disposition of Disciplinary Report Forms

- 1. At the end of the hearing and completion of the form, a copy shall be given to the inmate and a copy retained by the Adjustment Committee.
- 2. The original and top copy of a disciplinary report shall be routed to the Warden or his designee for his signature after action by the Adjustment Committee or Adjustment Officer.
- 3. The original and top copy of a completed disciplinary report involving good time loss shall then be forwarded to the Office of Adult Institutions for an administrative review. The completed form shall then be forwarded to Central Office Offender Information, which shall distribute it as follows:

Original - Institutional central file

One (1) Copy - To central office file

In reports involving no good time loss, the original shall be retained by the institutional Offender Information office and the top copy sent to the inmate's central office file.

- 4. If the inmate is scheduled to meet the Parole Board or has been recommended for parole and receives a disciplinary report, the institutional Offender Information office shall photocopy the disciplinary report and forward it to the Parole Board with a cover letter.

F. Appeals

- 1. An inmate may appeal in writing the adjustment decision to the Warden.

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2. The appeal shall be directed to the Warden of the institution whose Adjustment Committee or Adjustment Officer heard the case.
3. The inmate has fifteen (15) days after the decision to detail the reasons for the appeal. If an inmate is due to be released by minimum expiration of his sentence within the fifteen (15) days, the Warden's review shall occur prior to the inmate being released and the inmate may still file his appeal for further review by the Warden.
4. The Warden or his designee shall respond in writing within thirty (30) days of the Adjustment Committee or Adjustment Officer decision.
5. The Warden or his designee may, during his review:
 - a. order a rehearing because of procedural errors, substantive errors, or other appropriate reasons;
 - b. reduce the penalty;
 - c. suspend the penalty for a period of time not to exceed six (6) months;
 - d. void the disciplinary report in its entirety;
 - e. reduce the category of violations;
 - f. remand the charge for a new hearing before a different Adjustment Committee or Adjustment Officer.
6. The Warden or his designee shall not during his administrative or appellate review:
 - a. order a rehearing if the action has been dismissed;
 - b. raise the discipline;
 - c. order a rehearing on a new charge that carries a higher penalty.
7. An appeal may not be taken beyond the Warden.
8. The Warden has the authority at any time to order the disciplinary report to be vacated upon justification and may allow it to be re-investigated or re-heard, or both. This is at the Warden's level only and shall not create any new time for additional appeals. The Warden may also dismiss the report.

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G. Access to Disciplinary Hearing Tapes

- a. Access to tapes shall be arranged pursuant to CPP 6.1.
- b. Copies of that portion of the tape, pertaining to the particular hearing concerned, less the deliberation phase, shall be provided, if the audiotape is available.
- c. A reasonable fee consistent with the cost of providing the materials involved may be charged.

H. Informal Resolution of Minor Violations

1. If an inmate waives his right to a hearing by the Adjustment Committee or Adjustment Officer on a Minor Violation:
 - a. The disciplinary report shall be heard by a Unit Hearing Officer.
 - b. At the unit hearing the inmate shall be entitled to make a statement and present documentary evidence.
2. At the conclusion of the unit hearing, the Unit Hearing Officer shall complete the disciplinary report and indicate:
 - a. The finding;
 - b. The discipline imposed;
 - c. The date and time of hearing;
 - d. The signature of the Unit Hearing Officer.
3. A copy of the completed report shall be given to the inmate.
4. Decisions of a Unit Hearing Officer shall not be subject to appeal.
5. The completed disciplinary report shall be forwarded to the Unit Director, Warden or appropriate designee for an administrative review. Upon completion of the review, the reports shall be kept in a separate file. The report shall not be placed in the inmate's institutional or central office file unless it is used to demonstrate a second violation for purposes of disciplinary action under CPP 15.2.

KENTUCKY DEPARTMENT OF CORRECTIONS
W A I V E R

NAME _____ NUMBER _____
having been accused of a rule violation as follows:

Corrections Policy 15.2 - Rule Violations and Penalties

I agree to have the alleged violation heard by a Unit Hearing Officer for an informal resolution of the accusation. In making this agreement, I waive the following:

1. The right to have my case heard by the full institutional Adjustment Committee or Adjustment Officer.
2. The right to be represented by inmate or assigned legal aide.
3. The right to call witnesses on my behalf and to confront and cross-examine my accuser and hostile witnesses.
4. The right to appeal the decision of the Unit Hearing Officer.

I acknowledge that if my case is heard by the Unit Hearing Officer and if I am found guilty, neither the disciplinary report nor any documents relating to the disciplinary action shall be placed in my institutional or Central Office folder unless it is used as evidence to enhance punishment as contained in CPP 15.2. However, the unit or institution may keep a separate record for statistical, counseling or other purposes not related to my permanent records.

Inmate Signature Date

Signature of Witness or Date
Investigating Officer